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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,433	05/01/2006	Shaun Brian Womersley	039-209	8100

1009 7590 02/01/2008  
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LEXINGTON, KY 40507

EXAMINER
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BLAU, STEPHEN LUTHER

ART UNIT	PAPER NUMBER
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3711

MAIL DATE	DELIVERY MODE
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02/01/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/563,433

**Applicant(s)**

WOMERSLEY, SHAUN BRIAN

**Examiner**

Stephen L. Blau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 43-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

1. The argument that the specification discusses an assembly able to be a separate item placed in front of a face (Page 13 lines 1-4) is agreed with. As such the objection to the specification under rule 1.71 of 37 C.F.R. is removed.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The argument that the specification discusses an assembly able to be a separate item placed in front of a face (Page 13 lines 1-4) is agreed with. As such the rejection under 35 U.S.C. 112, first paragraph, is removed.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The argument that the specification discusses an assembly able to be a separate item placed adjacent to and in front of a face (Page 13 lines 1-4)

is agreed with. As such the rejection under 35 U.S.C. 112, second paragraph, is removed.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

~~Office action.~~  
Office action. No person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 43-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Fuller (2002/0193172).

Fuller discloses an alignment device able to be placed adjacent to and in front of a face (Fig. 3) able to train a golfer to adopt a stance in which the golfer's eyes are positioned vertically above the device (Figs. 1-3), two upwardly spaced apart members with an upper one (12) of the members having a circular outline (Figs. 1-2), a lower one (14) of the members having a circular outline (Figs. 1-2), a device able to have the upper one of the member located centrally in the lower one (Fig. 1), the spaced apart members able to produce an eclipse effect by the position of the upper one of the members in relation to the lower one of the members when a golfer's eyes are correctly positioned directly above a center

line of a head in the form of a center line of a head is able to be aligned with the center of the device (Figs. 1-3), the diameter of the circular outline greater than the circular outline of the upper one (Fig. 3) and the members connected together in a vertical spaced apart position by a central stem (40) (Fig. 3).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 43-46, 51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuff (4,423,874) in view of Ashcraft (6,261,190) or Soles (4,928,971).

Stuff discloses an alignment device comprises two upwardly spaced apart members with an upper one (17) of the members having a circular outline (Figs. 1, 5-7), a lower one (20) of the members having a circular outline (Figs. 1, 5-7), the diameter of the circular outline of the lower one (32) being equal to or greater than the circular outline of the upper one (18) in the form of being about the same size (Figs. 6-7, Col. 4, Lns. 44-45), an alignment device able to be placed

adjacent to and in front of a head face (Fig. 1), a device able to produce an eclipse effect by the positioning the upper one of the members in relation to the lower one (Figs. 5-6) when a golfer's eyes are correctly positioned directly above a center line of a head in the form of the eyes positioned directly above a ball along the centerline of a head (Figs. 1, 8, Col. 4, Lns. 56-60), and the upper (18) and lower members in the form of spots/markings are the same shape and size (Figs. 6-7, Col. 4, Lns. 44-45).

Stuff lacks an alignment device to train a golfer to adopt a stance in which the golfer's eyes are positioned vertically above the device.

Ashcraft discloses an alignment device to train a golfer to adopt a stance in which the golfer's eyes are positioned vertically above the device in the form of a plurality of upwardly oriented, separated surfaces on a head aligned vertically (Fig. 5c, Claim 21) in order to permit a golfer to detect and correct three-dimensional disorientation of a putter while lining up (Col. 1, Lns. 39-44). Soles discloses an alignment device to train a golfer to adopt a stance in which the golfer's eyes are positioned vertically above the device (Figs. 3A-3C, Col. 2, Lns. 54-57) in order to be able to putt a ball in a straight line (Col. 1, Lns. 10-35). In view of the patents of Ashcraft or Soles it would have been obvious to modify the club of Stuff to have an alignment device to train a golfer to adopt a stance in which the golfer's eyes are positioned vertically above the device in order to permit a golfer to detect and correct three-dimensional disorientation of a putter while lining up and in order to be able to putt a ball in a straight line.

9. Claims 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuff (4,423,874) in view of Ashcraft (6,261,190) or Soles (4,928,971) as applied to claims 43-46, 51 and 53 above, and further in view of Antonious (4,136,877) or Antonious (4,458,900).

Stuff discloses a plurality of markings being radial lines on an upper plate (17) (Figs. 5-7), a lower plate (20) parallel to an upper plate (17)(Fig. 3), a marking (18) on an upper plate corresponding to a marking (32) on a lower plate in the form of a circle (Figs. 6-7), and a connector connecting the upper plate to the lower plate in the form of the body (12) (Fig. 3).

Stuff lacks a plurality of markings on a lower member corresponding to the plurality of markings on the upper member, markings on the lower member comprising radial lines, and the plurality of markings on the upper and lower members comprising circular lines.

Antonious (4,136,877) discloses cross hairs or radial lines from a point which are on both an upper member and a lower member (Figs. 1-5) being aligned in order to aid the user in positioning a club (Abstract). Antonious (4,458,900) discloses cross hairs or radial lines from a point which are on both an upper member and a lower member (Figs. 1-9) and a plurality of circular lines (Fig. 15) in order to provide a user with precise alignment of a club (Abstract). In view of Antonious (4,136,877) or Antonious (4,458,900) it would have been obvious to modify the alignment device of Stuff to have a plurality of markings on

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a lower member corresponding to the plurality of marking on the upper member and marking on the lower member comprising radial lines in order to use more markings, more area of markings on a lower member and more of the lower member having markings to be eclipsed by the marking on the upper member making it easier for the golfer to see an misalignment compared with only using a small circle. In view of Antonious (4,458,900) it would have been obvious to modify the alignment device of Stuff to have the plurality of markings on the upper and lower members comprising circular lines in order to use more markings, more area of markings on a lower member and more of the lower member having markings to be eclipsed by the marking on the upper member making it easier for the golfer to see an misalignment compared with only using a small circle.

10. Claims 52 and 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuff (4,423,874) in view of Ashcraft (6,261,190) or Soles (4,928,971) as applied to claims 43-46, 51 and 53 above, and further in view of Liljequist (3,306,618).

Stuff discloses upper and lower members having different diameters.

Stuff lacks upper and lower members being plates and having the same diameter. Liljequist discloses upper (36) and lower (38) members being plastic or glass plates similarly shaped (Col. 2, Lns. 34-40). In view of Liljequist it would have been obvious to modify the alignment device of Stuff to have upper and



lower members being plates and having the same diameter in order to use a larger amount of the lower member for alignment purposes.

### ***Response to Arguments***

11. The argument that Stuff does not disclose spaced apart members producing an eclipse effect when a golfer's eyes are correctly positioned directly above a center line of a club head is disagreed with. The embodiment of figures 5-7 do show spaced apart members producing an eclipse effect when a golfer's eyes are correctly positioned directly above a center line of a club head. A center line is not a point but a line. Clearly the center line is able to pass through a ball aligned with the center line. Clearly figure 8 shows a ball centered on a head. Therefore if a golfer is looks directly down a vertical line on a ball aligned with a center line of a head than the golfer is positioned directly above a center line of a head. The argument that nowhere in Fuller is any mention made of plates forming an eclipse effect when a golfer's eyes are positioned directly above the center line of the head is disagreed with. Fuller shows circular plates having the same center (Figs. 1-3). Clearly Fuller is able to perform this function. One is able to look above the upper plate and center the upper plate over the lower plate which would mean that the golfer's eyes are positioned vertically above the device. The argument that the specification is enabling for an

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alignment device on head is agreed with and the objections and rejections have been overcome.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen L. Blau whose telephone number is (571) 272-4406. The examiner can normally be reached on Mon - Fri 10:00 AM - 6:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Slb/31 January 2008

/Stephen L. Blau/

Primary Examiner, Art Unit 3711